

12 PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, The Rouse Investing Company, legal owner, of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1802.1.B. (211.1) to permit minimum lot widths of 50' (lots 35 and 36) instead of the required 55'.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

Hardship. Owners have purchased lots fifty (50') feet in width and have had house plans prepared which are ideally adapted to these lots. People have been building on 50 foot lots for many years in the neighborhood. Present regulations will not permit owner to build on 50 foot lots. An application for subdivision to conform to current regulation would result in the loss of one of the two lots causing an increase in home costs.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

Contract purchaser: Rouse Investing Company
Legal Owner: Legal Owner
Address: 10225 Middle Patuxent Parkway
Columbia, Maryland 21044
Petitioner's Attorney: Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this 29th day

of July, 1980 that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through out Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 23rd day of September, 1980 at 10:00 o'clock A.M.

Paul H. Reincke
Zoning Commissioner of Baltimore County.

(over)

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

September 11, 1980

The Rouse Investing Company
10225 Middle Patuxent Parkway
Columbia, Maryland 21044

RID: Item No. 26
Petitioner - Rouse Investing Company
Variance Petition

Dear Mr. D. Hammon:

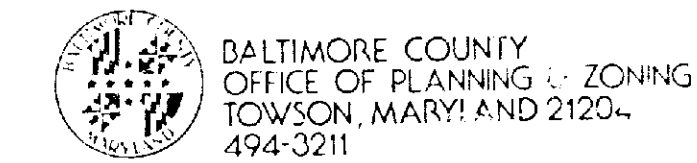
The Zoning Plans Advisory Committee has reviewed the petition submitted with the above referenced variance. The following comments are being submitted to indicate the committee's opinion on the petition. The committee has reviewed the petition and the site plan and has concluded that the petition is in compliance with the Zoning Law of Baltimore County and the Zoning Regulations of Baltimore County. The committee has also reviewed the petition and the site plan and has concluded that the petition is in compliance with the Zoning Law of Baltimore County and the Zoning Regulations of Baltimore County.

Enclosed are all documents submitted to this office from the committee members of this group. The committee has also reviewed the petition and the site plan and has concluded that the petition is in compliance with the Zoning Law of Baltimore County and the Zoning Regulations of Baltimore County.

Very truly yours,

NICHOLAS D. COMMODARI
Chairman
Zoning Plans Advisory Committee

Mr. William E. Hammon, Jr.
County Office Building
Towson, MD. 21204



NORMAN E. GERBER
DIRECTOR

September 16, 1980

Mr. William Hammon, Zoning Commissioner
Zoning Advisory Committee
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Dear Mr. Hammon:

Comments on Item #26, Zoning Advisory Committee Meeting, July 29, 1980, are as follows:

Property Owner: The Rouse Investing Company
Location: NE/S Gwynndale Avenue 127' N/E of Flannery Lane
Acres: 100/100.50 X 142.47/132.47
District: 2nd

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

This plan has been reviewed and there are no site-planning factors requiring comment.

Very truly yours,

John L. Wimbley
John L. Wimbley
Planner III
Current Planning & Development

baltimore county
department of traffic engineering
TOWSON, MARYLAND 21204
(301) 494-3550

STEPHENE COLLINS
DIRECTOR

August 20, 1980

Mr. William Hammon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Hammon:

The Department of Traffic Engineering has no comments on Items 19, 20, 21, 22, 23, and 26 of the Zoning Advisory Committee Meeting of July 29, 1980.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Engineer Associate II

MSP/hmd

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
825-7310

PAUL H. REINCKE
CHIEF

September 3, 1980

Mr. William Hammon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

Re: Property Owner: The Rouse Investing Company

Location: NE/S Gwynndale Avenue 127' N/E of Flannery Lane

Item No.: 26 Zoning Agenda: Meeting of 7/29/80

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below, marked with an "X", are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards, as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.
- () 6. Site plans are approved as drawn.
- () 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Paul H. Reincke Noted and Approved: George M. Hammon
PLANNING GROUP FIRE PREVENTION BUREAU
SPECIAL INSPECTION DIVISION

/mb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3600

ED JAFFA JR.
DIRECTOR

August 13, 1980

Mr. William E. Hammon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Hammon:

Comments on Item #26 Zoning Advisory Committee Meeting, July 29, 1980

Property Owner: The Rouse Investing Company
Location: NE/S Gwynndale Avenue - 127' NE of Flannery Lane
Existing Zoning: R.R. 5.5
Proposed Zoning: Variance to permit minimum lot widths of 50' in lieu of the required 55 ft.

Acres: 100/100.50 X 142.47/132.47
District: 2nd

The items checked below are applicable:

- X A. All structures shall conform to the Baltimore County Building Code 1978, and other applicable Codes.
- X B. building/_____ permit shall be required before beginning construction.
- X C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal 14/84 not required.
- D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.
- X E. In wood frame construction an exterior wall erected within 6' 0" of an adjacent lot line shall be of one hour fire resistant construction, no openings permitted within 3' 0" of lot line. Section 509.1.2 as amended.
- F. Requested variance conflicts with the Baltimore County Building Code.
- G. A change of occupancy shall be applied for, along with an alteration permit application, and then required set of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.
- A. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed complies with the height/area requirements of Table 205 and the required construction classification of Table 211.
- X I. Comments: It is assumed this is not in a flood plain. Should it be, Section 319.0 as amended would prohibit construction.

NOTE: These comments reflect only on the information provided by the drawing submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit.

If desired additional information may be obtained by visiting Room #102 (Plans Review) at 111 West Chesapeake Ave., Towson.

Very truly yours,
Charles E. Hammon
Charles E. Hammon, Chief
Plans Review

(CHS)

SPECIAL NOTE FOR CONSTRUCTION IN TIDAL OR RIVERINE AREAS

BILL 199 - 79 BALTIMORE COUNTY BUILDING CODE 1978

EFFECTIVE MARCH 1, 1980

- SECTION 319.0 A new section added to read as follows:
- SECTION 319.0 Construction in Areas Subject to Flooding.
- 319.1 Areas Subject to Inundation by Tidelaters.

1. Where buildings or additions are built in areas subject to inundation by tidelaters, the lowest floor (including basement) shall not be lower than one (1) foot above the 100 year flood elevation, as established by the U.S. Army Corps of Engineers or the Federal Flood Insurance Study, whichever is the more restrictive. Such buildings or additions shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure, be constructed with materials resistant to flood damage.

2. Crawl spaces under buildings constructed in the tidal flood plain as determined by the U.S. Army Corps of Engineers or the Federal Flood Insurance Study, whichever is the more restrictive, shall be constructed so that water will pass through without resulting debris causing damage to the improvements of any property.

3. New or replacement utility systems, including but not limited to water supply, sanitary sewer, electric, gas and oil, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require onsite waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

319.2 Riverine areas subject to inundation by surface waters within the 100 year flood plain.

1. No structure or additions shall be allowed within the 100 year flood plain of any watercourse. The 100 year flood plain shall be based upon the Federal Flood Insurance Study or the Department of Public Works, whichever is the more restrictive; this determination shall include planned future development of the watershed area.

2. Reconstruction of residential dwelling units shall be governed by Sections 106.0 or 123.0 as applicable, except that rebuilding or residential dwellings units damaged in excess of 50 percent of physical value shall also be governed by the provisions of subsection 319.1 of this section.

3. Reconstruction of other than residential buildings or structures in the riverine areas shall be made to conform to 319.1 when damage exceeds 50 percent of physical value.

rrl/

ORDER RECEIVED FOR FILING

DATE November 18, 1980
BY John P. Dwyer, Jr.
ADMINISTRATIVE ASSISTANT

Pursuant to the advertisement, posting of property, and a public hearing on the Petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioner(s), the Variance(s) should be had; and it further appears that the granting of the Variance(s) requested will not adversely affect the health, safety, and general welfare of the community; and, therefore,

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 19th day of November, 1980, that the herein Petition for Variance(s) to permit lot widths of fifty feet in lieu of the required fifty-five feet, for the expressed purpose of constructing single-family dwellings on Lots 35 and 36, in accordance with the site plan marked Petitioner's Exhibit 2, should be and the same is GRANTED, from and after the date of this Order, subject, however, to the following restrictions:

- Any further resubdivision of the remaining lots and/or remaining tract of ground, as shown on both Petitioner's Exhibit 1, prepared by George William Stephens, Jr. and Associates, Inc., dated October 17, 1978, and revised June 25, 1980, or any subsequent revisions thereof, and Petitioner's Exhibit 2, shall not create lots having a minimum width of less than fifty-five feet.
- Compliance with the subdivision regulations at such time as a new site plan for the development of the total tract is proposed to be recorded.
- Approval of the site plan, herein referred to as Petitioner's Exhibit 1, by the Department of Public Works and the Office of Planning and Zoning.

William E. Hammond
Zoning Commissioner of
Baltimore County

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert C. Dubel, Superintendent

Towson, Maryland - 21204

Date: July 28, 1980

Mr. William E. Hammond
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of: July 29, 1980

RE: Item No: 19, 20, 21, 22, 23, 24, 25, 26
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Hammond:

All of the above have no bearing on student population.

Very truly yours,
Nick Petrovich
Mr. Nick Petrovich, Assistant
Department of Planning

WNP/bp

Powhatan Farms IMPROVEMENT ASSOCIATION, INC.

6224 Robin Hill Road
Baltimore 7, Maryland

September 18, 1980
Re: Zoning Petition 81-66-A
Item #26

Mr. William E. Hammond
Zoning Commissioner
Baltimore County
1111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Hammond:

At a duly constituted meeting of the Powhatan Farms Improvement Association, Inc., held September 17, 1980, the membership consisting of residents of the Powhatan Farms community, voted to oppose the granting of a variance to the width requirements of Baltimore County on lots #35 and #36, Northeast side of Gwynndale Avenue, 127' N.E. of Flannery Lane, from 55' to 50' as requested by The Rouse Investing Co.

The community based its opposition on the premise that this request could start a very undesirable precedent, since these lots are but two of approximately 40 undeveloped lots on the plat, most of which are 45' to 50' wide. We fear that if this variance is approved, requests and approval for variances of the remaining lots may soon follow, and this would have an adverse effect upon our community.

Sincerely,
Henry Carp
HENRY CARP
President

PROTESTANT'S
EXHIBIT 1

BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS TOWSON, MARYLAND 21204

HARRY J. IGIEL, P.E.
DIRECTOR

September 18, 1980

Mr. William E. Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #26 (1980-1981)
Property Owner: The Rouse Investing Company
N/E S Gwynndale Ave. 127' N/E of Flannery Lane
Acres: 100/100.50 x 142.47/132.47
District: 2nd

Dear Mr. Hammond:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

This property comprises Lots 3 and 4, Block 13 "Map of Gwyn Oak Summit", J.W.S. 2, Folio 370; being also designated as Lots 35 and 36 Block 1, "Flat One Section Three Powhatan", W.J.R. 28, Folio 102; and being also designated as Parcel A, "Powhatan Apartments Resubdivision of a Portion of Gwyn Oak Summit", R.R.G. 30, Folio 92.

Previously, Public Works Agreements 26212 and 26407 were executed in conjunction with the development of Powhatan. The Petitioner's proposed additional development of Powhatan was reviewed by the Baltimore County Joint Subdivision Planning Committee November 2, 1978. The Baltimore County Bureau of Engineering supplied comments July 29, 1980 in connection with the Preliminary Plan of the Petitioner's latest revision of Powhatan dated June 19, 1980, Project 8243 on which this property is indicated as Lots 1 and 2, Block "A".

Comments were also supplied September 13, 1978 by the Baltimore County Bureau of Engineering in connection with Powhatan, Project IDCA 78-228.

All of the foregoing comments are available and referred to for your consideration.

Additional fire hydrant protection is required in this vicinity.

Very truly yours,

Ellsworth N. Diver, P.E.
ELLSWORTH N. DIVER, P.E.
Chief, Bureau of Engineering

END:EAM:FWR:as

cc: R. Morton, J. Wimbley, J. Somers, R. Covahey, W. Munchel

K-MW Key Sheet

13 NW 20 Pos. Sheet

NW 4 E Topo

88 Tax Map

RE: PETITION FOR VARIANCE : BEFORE THE ZONING COMMISSIONER
NE/S of Gwynndale Ave., 127'
NE of Flannery Lane, 2nd District : OF BALTIMORE COUNTY
THE ROUSE INVESTING COMPANY: Case No. 81-60-A
Petitioner

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefore, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
John W. Hession, III
John W. Hession, III
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 3rd day of September, 1980, a copy of the foregoing Order was mailed to Douglas Douglas, Jr., Vice-President, The Rouse Investing Company, 10275 Middle Patuxent Parkway, Columbia, Maryland 21044, Petitioner.

John W. Hession, III
John W. Hession, III

BALTIMORE COUNTY
DEPARTMENT OF HEALTH
TOWSON, MARYLAND 21204
DONALD J. ROOP, M.D., M.P.H.
DEPUTY STATE & COUNTY HEALTH OFFICER

September 10, 1980

Mr. William R. Hammond, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Hammond,

Comments on Item #26, Zoning Advisory Committee meeting of July 29, 1980, are as follows:

Property Owner:	The Rouse Investing Company
Location:	NE/S Gwynndale Ave. 127' N/E of Flannery Lane
Existing Zoning:	D.R. 55
Proposed Zoning:	Variance to permit minimum lot widths of 50' in lieu of the required 55 ft.
Acres:	100/100.50 x 142.47/132.47
District:	2nd

Metropolitan water and sewer are available, therefore, no health hazards are anticipated.

Very truly yours,

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/aw

THE ROUSE INVESTING COMPANY

A SUBSIDIARY OF THE ROUSE COMPANY

October 1, 1980

Mr. William E. Hammond
Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Re: Variance Petition NE/S Gwynndale Avenue -
127 Feet NE of Flannery Lane

Dear Commissioner Hammond:

As a follow-up to our telephone conversation last week, I have enclosed a Memorandum in support of Rouse Investing Company's position on the captioned variance petition. Should you need anything further, please do not hesitate to contact me at your convenience. At your direction, I am also forwarding a copy of the enclosed Memorandum to Mr. Carp.

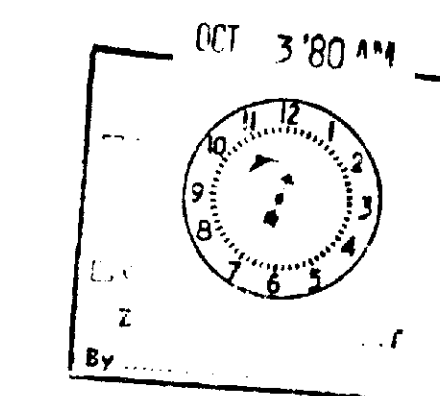
Very truly yours,

Thomas F. Ireton
Thomas F. Ireton
Associate General Counsel

TFI:as

Enclosure

cc: Henry Carp



The following residents of Powhatan Farm Association request that the Petition for variance of lots 35 and 36 to 50 ft. in lieu of 55 ft. be granted by the House Investing Co. Item No. 26 Case 81-60-A be denied.

1. Barbara J. Jorgensen 3309 Bellvue Rd. 21207
Adele K. Jorgensen 5707 Fellsview Ct 21207
Maurice A. Jorgensen 3415 Redman Rd 21207
Gloria K. Jorgensen 6204 Robin Hill Rd 21207
John J. Jorgensen 5718 Pennock Ave 21207
Mrs. Robert H. Jorgensen 3309 Bellvue Rd 21207
Philip J. Jorgensen 5705 Fellsview Ct 21207
James C. Jorgensen 5708 Pennock Ave 21207
Charles J. Jorgensen 3414 Bellvue Rd 21207
Lance J. Jorgensen 3415 Bellvue Rd 21207
Beverly J. Jorgensen 3415 Bellvue Rd 21207
Charles J. Jorgensen 5715 Pennock Ave 21207
David J. Jorgensen 5709 Pennock Ave 21207
William J. Jorgensen 5717 Bellvue Rd 21207
John J. Jorgensen 3315 Fellsview Ct 21207
Verna J. Jorgensen 6203 Fellsview Rd 21207
John J. Jorgensen 3419 Redman Rd 21207
Nik J. Jorgensen 3417 Redman Rd 21207
Philip J. Jorgensen 5713 Pennock Ave 21207
John J. Jorgensen 5713 Pennock Ave 21207
John J. Jorgensen 3307 Bellvue Rd 21207
John J. Jorgensen 3417 Bellvue Rd 21207
Randy R. Jorgensen 5619 Pennock Ave 21207
William J. Jorgensen 5611 Pennock Ave 21207
John J. Jorgensen 5715 Fellsview Ct 21207
Carl J. Jorgensen 5508 Fellsview Ct 21207
James J. Jorgensen 3315 Fellsview Rd 21207
John J. Jorgensen 3417 Fellsview Rd 21207
John J. Jorgensen 6205 Fellsview Rd 21207
John J. Jorgensen 3415 Fellsview Rd 21207
John J. Jorgensen 3415 Fellsview Rd 21207
(over)

Yvonne J. Bruce 5712 Payson Avenue 21207
Adrianne Allen 6304 Robin Hill Rd. 21217

PROTESTANT'S EXHIBIT 2

TFI:cs (5) 10/1/80

MEMORANDUM IN SUPPORT OF ROUSE INVESTING COMPANY'S PETITION FOR ZONING VARIANCE

Earlier this year Rouse Investing Company (hereinafter referred to as "RIC") applied to the Baltimore County Office of Planning and Zoning for a variance to permit the development of a 100 foot wide parcel of land which it owned into two 50 foot wide lots where the minimum width required is 55 feet. The Petition was docketed as Case No. 81-60-A.

FACTS

RIC is the owner of a certain parcel of land located in Baltimore County, Maryland known generally as "Powhatan" and more particularly identified on the Preliminary Site Plan filed in the above-mentioned zoning variance proceedings as Petitioner's Exhibit 1. The property is zoned DR5.5 and RIC is presently engaged in the subdivision/land development processes in accordance with this zoning classification. Since a portion of the property lies within 300 feet of 3 existing one family detached dwellings, RIC is required under Section 1801.18 of the Baltimore County Zoning Regulations (the "Zoning Regulations") to limit its development within those areas (which are termed "Residential Transition Areas") to single family detached houses. The property itself consists of two separate pieces, the larger containing of approximately 19 acres and a smaller parcel measuring 100 feet in width and running to a depth of 132 feet on one side and 142 feet on the other. The smaller parcel in its entirety, as well as a portion of the larger tract, lie within Residential Transition Areas. The subject of the variance petition

filed with the Office of Planning and Zoning concerns only the smaller 100 foot wide parcel of land.

Section 1801.2C.4 of the Zoning Regulations requires, for purposes of RIC's petition, a minimum lot width of 55 feet for any lot located within a Residential Transition Area. RIC, accordingly, prepared its development plan in compliance with the Zoning Regulation requirements for Residential Transition Areas and was able to do so with respect to the larger tract, but not with respect to the two lots that would be located on the smaller parcel (Lots 1 and 2 on the Site Plan). Since RIC owned no property on either side of the 100 foot wide parcel it could not expand the width of the parcel to accommodate two 55 foot wide lots. Hence, because of this practical difficulty, RIC applied for a variance to permit the development of these 2 lots for single family detached houses at 50 foot widths.

A hearing on the variance was held at the Baltimore County Office of Planning and Zoning on Tuesday, September 23, 1980 before William B. Hammond, Zoning Commissioner. Appearing on behalf of RIC were David Forester, RIC's Development Director, John Smith, an outside engineer hired by RIC, and Thomas F. Ireton, Counsel for RIC. Also present at the hearing were representatives from Powhatan Farms Improvement Association, Inc., the spokesman for whom was Mr. Henry Carp.

The Improvement Association's primary objection to the variance appeared to be that it might create an unfavorable precedent for further variances on the remaining lots, as well as a concern that the property not be developed for apartment purposes.

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Mr. Forester gave assurances to the Improvement Association that it was neither RIC's intent to develop the land for apartment uses, nor to seek variances for more than the two lots in question.

Mr. Smith testified to the effect that the granting of the variance would not increase density, nor, in his opinion, result in substantial injury to public health, safety and welfare. Moreover he testified that he believed the development of the two lots with the variance would be in harmony with both the spirit and intent of the Zoning Regulations. Mr. Smith's testimony on these points was uncontroverted. Additionally, it was pointed out by Mr. Smith that economically it made more sense to develop the parcel as two 50 foot wide lots, rather than one 100 foot wide lot.

RIC's position could be summarized as follows: Because of the Residential Transition Area, it had, basically, two options: (i) it could develop the property in question as a single, detached house on a hundred foot wide lot which would be, notwithstanding the existence of one other hundred foot wide lot in the area, out of harmony with both the existing neighborhood (developed, for the most part, as single family homes on 50 foot wide lots), and RIC's proposed single family detached development which would be on 55 foot wide lots; or (ii) apply for the variance in order to develop two 50 foot wide single family, detached lots.

Some discussion ensued as to whether or not the failure to grant the variance would result in practical difficulty or unreasonable hardship to RIC, and, if so, were the resulting negative economic or financial consequences to RIC not sufficient grounds under the facts of the case to justify the granting of a variance.

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The purpose of the remainder of this memorandum will be to address that issue.

DISCUSSION

Section 307 of the Zoning Regulations provides, in part, that the Zoning Commissioner of Baltimore County has the power to grant variances:

from height and area regulations, ... only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

The use of the disjunctive phrase "practical difficulty or unreasonable hardship" is not without significance in the law. The Court of Appeals has had occasion to construe Section 307 of the Baltimore County Zoning Regulations in the case of Loyola Federal Savings and Loan Association v. Buschman, 227 Md. 243, 176 A.2d 355 (1961). In that case, the applicant, Loyola Federal, sought a variance from a height limitation for a proposed office building to be built on the north side of Pennsylvania Avenue in Towson. Two additional floors were required for the building because the side set back and parking space requirements made it necessary to build the structure in the manner that Loyola desired. In that case, the Court noted, at 250-251:

The terms of Section 307 are applicable only to variances of height and area. We see no occasion to construe that section otherwise than as it reads - in the disjunctive - "practical difficulty or unreasonable hardship" and we see no reason to construe "practical difficulty" here as the equivalent of a taking in the constitutional sense.... (T)o restrict Loyola to a building of uneconomical size where, as here, the Board's findings that there is no injury to the public health, safety and general welfare and that the proposed variance is in strict harmony with the

spirit and intent with the Regulations should be upheld, would, we think, place too narrow a construction upon Section 307 and would itself impose an unreasonable hardship on the applicant....

The holding of the Court in Loyola and its distinction of the difference between "practical difficulty" and "unreasonable hardship", with the former being applicable to area variance cases and the latter applicable to use variance cases has been reaffirmed by the Court of Appeals and the Court of Special Appeals, McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973) and Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974).

In the Anderson case the Court of Special Appeals observed that where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in the constitutional sense such as is required under the "unreasonable hardship" standard. The Court in Anderson set forth the different criteria which an applicant must meet depending upon whether he is seeking an area variance based upon "practical difficulty" or a use variance based upon "undue hardship". Anderson, supra, 322 A.2d, at p. 226. In summary, where the standard of undue hardship applies, the applicant, in order to justify the grant of a variance, must satisfy the zoning authorities that: (1) if he complied with the ordinance he would be unable to secure a reasonable return from, or to make any reasonable use of, his property, mere financial hardship not being a sufficient reason; (2) the difficulties or hardships are peculiar to the applicant's property and contrast with those of other

property owners in the same district; and (3) the hardship did not result from the applicant's own actions.

The standards applicable in a "practical difficulty" situation, however, represent a lesser burden of proof, if you will, for the applicant. As the Court in Anderson pointed out, at 322 A.2d 226:

In order to justify the grant of an area variance the applicant need show only that:

1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

The Court of Special Appeals in Anderson had reiterated the criteria established by the Court of Appeals in McLean v. Soley, supra, at 310 A.2d 787.

In summary, RIC's situation is not wholly dissimilar from that of Loyola Federal's. Loyola Federal could have built a building of the size it wished in conformance with the zoning requirements (i.e., limited in height to four stories) but for the need to provide adequate off-street parking. However, in order to achieve the size (in terms of square footage) it desired for the building, Loyola

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Federal would have to have constructed a basement parking garage. This it was unable to do because of subterranean water problems. Thus, the Court of Appeals found that Loyola Federal was presented with a legitimate "practical difficulty" in being able to build an economically feasible building. Loyola Federal, supra, at 250-251. Interestingly enough, the Court of Appeals made no comment upon the fact that, presumably, Loyola could have, by scaling down the size of its building, provided adequate parking and remained within the four story height requirements of the Zoning Regulations. One thing does appear to be clear: although Loyola Federal could have built a four story office building in accordance with the Zoning Regulations, it would not have been as economically viable as the six story building. It would also seem clear that there was, to some extent, at least, a financial disadvantage to constructing a building of less than six stories. However, since the Court was dealing with a "practical difficulty" issue and not one of "unreasonable hardship" the first criteria for "undue hardship" cases (i.e. compliance with the zoning ordinance would prohibit an applicant from securing a reasonable return from, or to make any reasonable use of, his property) was not a factor. The Court of Appeals found, on the other hand, that Loyola Federal had, in fact, satisfied the three basic criteria for granting a variance in a situation where "practical difficulties" controlled, rather than "unnecessary hardship".

It is submitted that RIC's position is substantively - albeit not factually - similar. Stated another way, RIC is faced with a "practical difficulty" in that the Residential Transition Area requires RIC to develop the smaller parcel for single family detached

-7-

-4-

-5-

homes. The evidence is uncontroverted that () strict compliance with the Zoning Regulations would unreasonably prevent RIC from using the property for a permitted purpose or would render conformity with such Regulations unnecessarily burdensome; (2) granting of the variance would do substantial justice to RIC and no substantial injustice to other property owners in the area; and (3) the variance, if granted, would permit the development of the small parcel in a way that would be consistent with the spirit and intent of the Zoning Regulations without endangering public health, safety and welfare. The fact that the granting of the variance would permit RIC to develop the property in a more economical fashion should be no more controlling here than it was in Loyola Federal Savings and Loan Association v. Buschman, supra.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that RIC has met the criteria established by the Court of Appeals for establishing a "practical difficulty" in respect of its development of the property and that, having met that burden, the "practical difficulty" coupled with the uncontroverted testimony to the effect that the granting of the variance would cause no increase in density, no substantial injury to public health, safety and welfare, and would be in harmony with the spirit and intent of the Zoning Regulations, should compel a favorable ruling to RIC on its requested variance.

Respectfully submitted,

Thomas F. Ireton
Thomas F. Ireton
Associate General Counsel

-8-

FROM THE OFFICE OF
GEORGE WILLIAM STEPHENS, JR. & ASSOCIATES, INC.
ENGINEERS
303 ALLEGHENY AVENUE, TOWSON, MARYLAND 21204

Description to accompany a Zoning
Petition for a Variance in an
Existing DR 5.5 Zone
"Powhatan" Plat One Section Three

July 11, 1980

Located on the northeast side of Gwynndale Avenue approximately 127' northeast of Flannery Lane and being all of Lot 35 and 36, Block 1, as shown on the plat entitled Plat One, Section Three, Powhatan dated August 20, 1962 and recorded among the Plat Records of Baltimore County in Plat Book W.J.R. 28 folio 102.



PETITION FOR VARIANCE 2nd District

ZONING: Petition for Variance for lot widths
LOCATION: Northeast side of Gwynndale Avenue, 127 feet Northeast of Flannery Lane
DATE & TIME: Tuesday, September 23, 1980 at 10:00 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit minimum lot widths of 50 feet (Lots 35 & 36) in lieu of the required 55 feet

The Zoning Regulation to be excepted as follows:

Section 1B02.3.B (211.1) - Lot widths

All that parcel of land in the Second District of Baltimore County

Being the property of The Rouse Investing Company, as shown on plat plan filed with the Zoning Department

Hearing Date: Tuesday, September 23, 1980 at 10:00 A.M.
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

BY ORDER OF
WILLIAM E. HAMMOND
ZONING COMMISSIONER
OF BALTIMORE COUNTY

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
294-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

September 12, 1980

The Rouse Investing Company
c/o Mr. Douglas Douglas, Jr.
10275 Middle Patuxent Parkway
Columbia, Maryland 21044

RE: Petition for Variance
NE/S Gwynndale Ave., 127' NE
of Flannery Lane
Case No. 81-60-A

Dear Mr. Douglas:

This is to advise you that \$45.75 is due for advertising and posting of the above-property.

Please make check payable to Baltimore County, Maryland and remit to Sondra Jones, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,
William E. Hammond
WILLIAM E. HAMMOND
Zoning Commissioner

WEH:sj

The Rouse Investing Company
c/o Mr. Douglas Douglas, Jr.
10275 Middle Patuxent Parkway
Columbia, Maryland 21044

August 27, 1980

NOTICE OF HEARING

RE: Petition for Variance - NE/S of Gwynndale Avenue,
127' Northeast of Flannery Lane - Case No. 81-60-A

TIME: 10:00 A.M.

DATE: Tuesday, September 23, 1980

PLACE: ROOM 106 COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE,
TOWSON, MARYLAND

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. W. E. Hammond
Zoning Commissioner Date: September 11, 1980
FROM: Howard E. Jones, Acting Director
Division of Administrative Services
SUBJECT: Petition No. 81-60-A Item 26

Petition for Variance for lot widths
Northeast side of Gwynndale Avenue, 127 feet Northeast of
Flannery Lane
Petitioner: The Rouse Investing Company

Fifteenth District

HEARING: Tuesday, September 23, 1980 (10:00 A.M.)

There are no comprehensive planning factors requiring comment on this petition.

WEH:GCH:ab

Howard E. Jones
Howard E. Jones, Acting Director

November 19, 1980

Mr. Douglas Douglas, Jr.
Vice President
The Rouse Investing Company
10275 Middle Patuxent Parkway
Columbia, Maryland 21044

RE: Petition for Variances
NE/S of Gwynndale Avenue, 127' NE
of Flannery Lane - 2nd Election
District
The Rouse Investing Company -
Petitioner
NO. 81-60-A (Item No. 26)

Dear Mr. Douglas:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,

WILLIAM E. HAMMOND
Zoning Commissioner

WEH/erl

Attachments

cc: Mr. Henry Carp
6224 Robin Hill Road
Baltimore, Maryland 21207

John W. Hessian, III, Esquire
People's Counsel

cc: George William Stephens, Jr., & Assoc.
303 Allegheny Avenue
Towson, Maryland 21204

The Rouse Investing Company
10275 Middle Patuxent Parkway
Columbia, Maryland 21044

cc: George William Stephens, Jr.
303 Allegheny Avenue
Towson, Maryland 21204

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received and accepted for filing this 29th day
of July, 1980.

William E. Hammond
WILLIAM E. HAMMOND
Zoning Commissioner

Petitioner: The Rouse Investing Company
Petitioner's Attorney: _____

Reviewed by: *Nicholas B. Commodari*
Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

PETITION MAPPING PROGRESS SHEET

FUNCTION	Wall Map		Original		Duplicate		Tracing		200 Sheet	
	date	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, BA, CC, CA										
Reviewed by: <i>W.E.H.</i>	Revised Plans: Change in outline or description Yes _____ No _____									
Previous case:	Map # _____									

DUPLICATE CERTIFICATE OF PUBLICATION

PETITION FOR VARIANCE
15th DISTRICT

ZONING: Petition for Variance for lot widths

LOCATION: Northeast side of Gwyndale Avenue, 127 feet Northeast of Flannery Lane

DATE & TIME: Tuesday, September 23, 1980 at 10:00 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit minimum lot widths of 50 feet (Lots 35 & 36) in lieu of the required 55 feet

The Zoning Regulation to be excepted as follows:

Section 1B02.3.B (211.1) - Lot widths

All that parcel of land in the Fifteenth District of Baltimore County Located on the northeast side of Gwyndale Avenue approximately 127' northeast of Flannery Lane and being all of Lot 35 and 36, Block I, as shown on the plat entitled Plat One, Section Three, Powhatan dated August 20, 1962 and recorded among the Plat Records of Baltimore County in Plat Book W.J.R. 28 folio 102.

Being the property of The Rouse Investing Company, as shown on plat plan filed with the Zoning Department

Hearing Date: Tuesday, September 23, 1980 at 10:00 A.M.

Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

By Order of
WILLIAM E. HAMMOND,
Zoning Commissioner
of Baltimore County
Sept. 4.

TOWSON, MD., _____, 19-80

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of _____ successive weeks before the _____ day of _____, 19____, the first publication appearing on the _____ day of _____, 19-80.

THE JEFFERSONIAN,

L. Lusk Strickland
Manager.

Cost of Advertisement, \$ 19.25

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received this 23 day of July, 1980*

Filing Fee \$ 25 Received: check Cash Other

#26

William E. Hammond
William E. Hammond, Zoning Commissioner

Petitioner Rouse Inv. Co. Submitted by George William Stephens, Jr.
Petitioner's Attorney _____ Reviewed by WJH

*This is not to be interpreted as acceptance of the Petition for assignment of a hearing date.

81-60A

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District 2nd Date of Posting 9-8-80
Posted for: Variance for lot Width
Petitioner: Rouse Investing Co.
Location of property: NE/S Gwyndale Ave., 127' NE
Flannery Ln.
Location of Signs: corner as above; front of property

Remarks: _____ Date of return: 9-8-80
Posted by G.C. Freund Signature

PETITION FOR VARIANCE

ZONING: Petition for Variance for lot widths

LOCATION: Northeast side of Gwyndale Avenue, 126 feet Northeast of Flannery Lane

TUESDAY, SEPT. 23, 1980
AT 10:00 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Md.

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit minimum lot widths of 50 feet (Lots 35 & 36) in lieu of the required 55 feet.

The Zoning Regulation to be excepted as follows:

Section 1B02.3.B (211.1) - Lot widths

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Being the property of The Rouse Investing Company, as shown on plat plan filed with the Zoning Department.

Hearing Date: Tuesday, Sept. 23, 1980, at 10:00 A.M.

Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Ave., Towson, Md.

By order of
WILLIAM E. HAMMOND
Zoning Commissioner
of Baltimore County

The Essex Times

Essex, Md., Sept 4 1980

This is to Certify, That the annexed

Petition - Rouse

was inserted in The Essex Times, a newspaper printed and published in Baltimore County, once in each of one successive weeks before the 4th day of Sept, 1980

Charles W. H. H. H. Publisher.



BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 091784

DATE October 2, 1980 ACCOUNT 01-662

AMOUNT \$45.75

RECEIVED FROM David E. Forester
FOR Adv. & Posting for Case No. 81-60-A

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

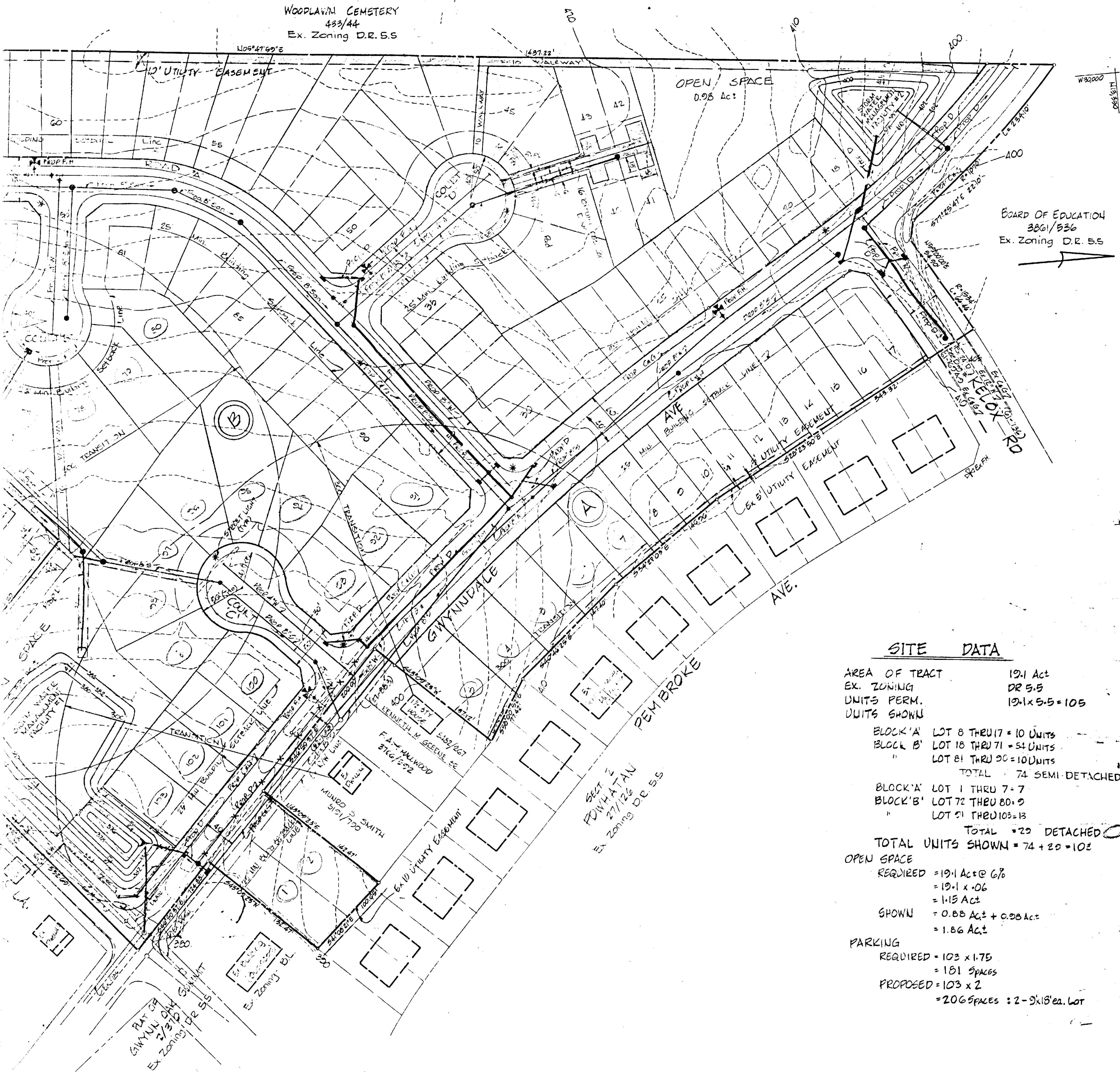
No. 091709

DATE August 27, 1980 ACCOUNT 01-662

AMOUNT \$25.00

RECEIVED FROM George William Stephens, Jr. & Assoc.
FOR Filing Fee for Case No. 81-60-A

VALIDATION OR SIGNATURE OF CASHIER



SITE DATA	
AREA OF TRACT	19.1 Ac
EX. ZONING	DR 5.5
UNITS PERM.	19.1 x 5.5 = 105
UNITS SHOWN	
BLOCK 'A'	LOT 8 THRU 17 = 10 UNITS
BLOCK 'B'	LOT 18 THRU 71 = 54 UNITS
"	LOT 81 THRU 90 = 10 UNITS
TOTAL	74 SEMI-DETACHED
BLOCK 'A'	LOT 1 THRU 7 = 7
BLOCK 'B'	LOT 72 THRU 80 = 9
"	LOT 91 THRU 103 = 13
TOTAL	29 DETACHED
TOTAL UNITS SHOWN	74 + 29 = 103
OPEN SPACE	
REQUIRED	= 19.1 Ac @ 6%
	= 19.1 x .06
	= 1.15 Ac
SHOWN	= 0.88 Ac + 0.88 Ac
	= 1.86 Ac
PARKING	
REQUIRED	= 103 x 1.75
	= 181 SPACES
PROPOSED	= 103 x 2
	= 206 SPACES : 2 - 9' x 18' ea. LOT

PETITIONER'S
EXHIBIT 1

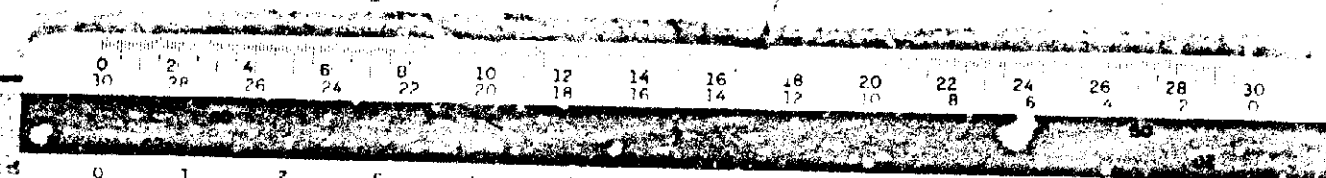
PLAT TWO, SECTION THREE
POWHATAN
A RESUBDIVISION OF
POWHATAN APARTMENTS (30/42)
+ PLAT ONE, SECTION THREE
POWHATAN (28/102)

ERIM STEPHENS JR
ASSOCIATES, INC.
1000 W. WASHINGTON AVE.
BALTIMORE, MARYLAND

OWNER
THE ROUSE INVESTING CO.
10275 LITTLE PATUXENT PKAY.
COLUMBIA, MARYLAND 21044

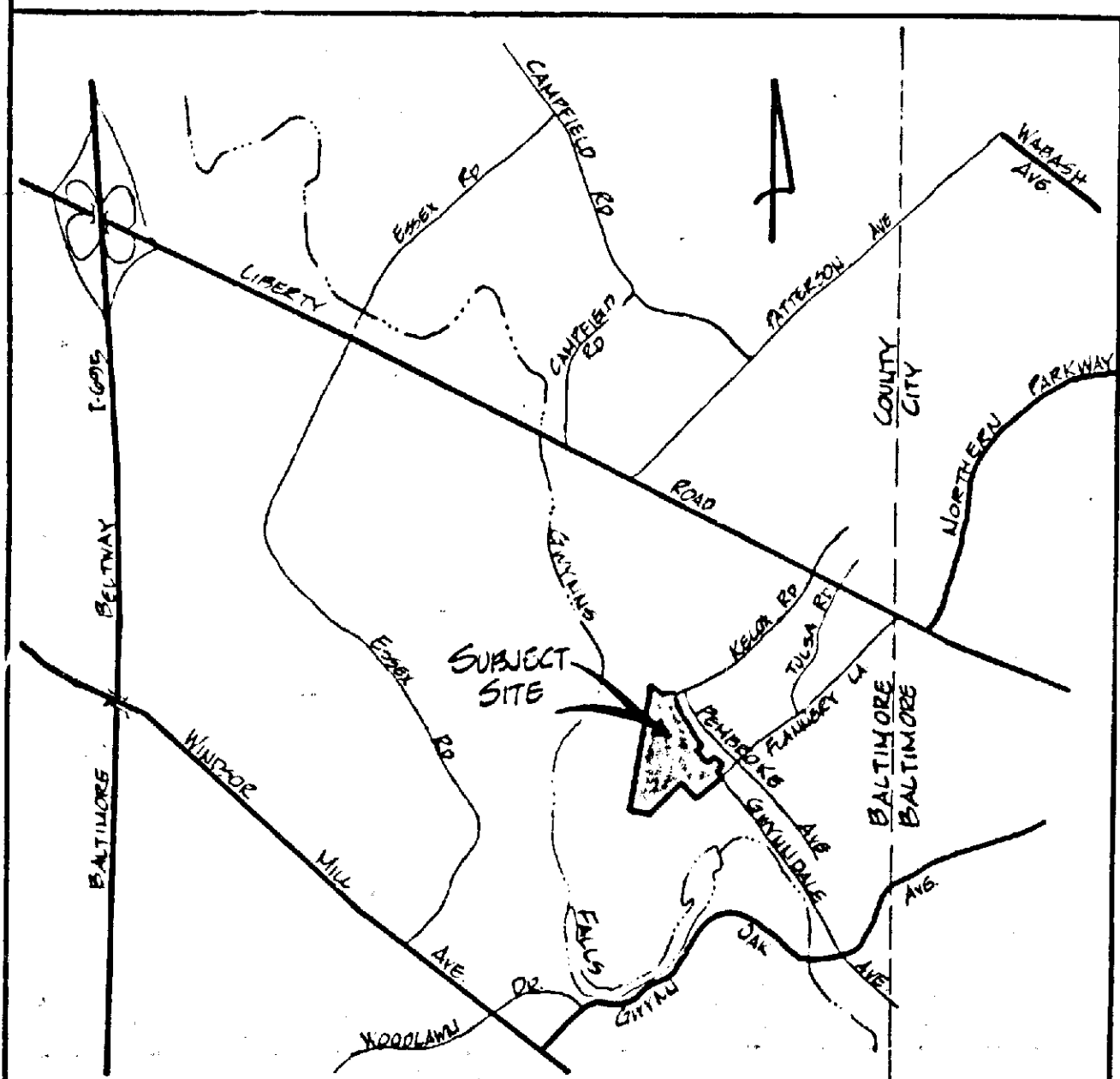
TITLE
DEED REF: E.H.K. JR 5415/327
PLAT REF: POWHATAN APTS
REG. 30/92
TAX MAP # 88, PARCEL 238

BALTO. CO., MD.
SCALE: 1"=50'
ELECT. DIST. #2
OCT. 17, 1978
REV. 5-14-80 Added Drain in Kelox Rd
REV. 6-12-80 Gwynndale Ave.
REV. 6-12-80 Revised layout
P.N. 3997



WOODLAWN CEMETERY
433/44
Ex. Zoning D.R.5.5

STORM WATER MANAGEMENT DATA		
	FACILITY #1	FACILITY #2
DRAINAGE AREA (TOTAL)	17.0 A.C.	3.6 A.C.
DRAINAGE AREA ROUTED THROUGH SWM FACILITY	17.0 A.C.	3.6 A.C.
EX. ECN	74	71
PROP. ECN	83	76
EX. 2 YR Q	1023 CFS	414 CFS
EX. 10 YR Q	4530 CFS	1031 CFS
EX. 100 YR Q	7655 CFS	1720 CFS
PROP. 2 YR Q	3584 CFS	652 CFS
PROP. 10 YR Q	7257 CFS	1502 CFS
PROP. 100 YR Q	11357 CFS	2450 CFS
100 YR STORAGE REQ'D	66,350 CFS	11,312 CFS
100 YR STORAGE PROP.	70,875 CFS	11,450 CFS



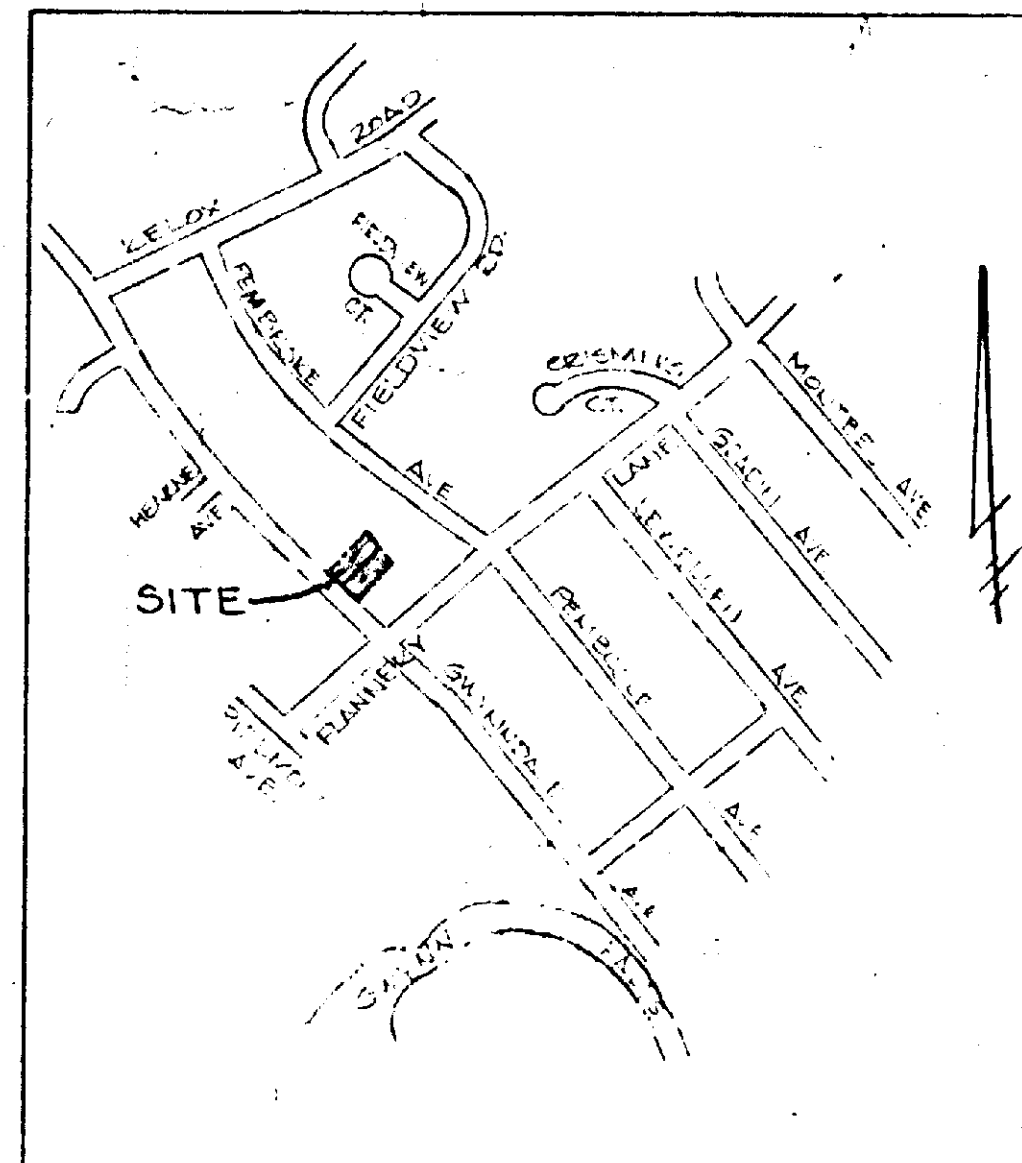
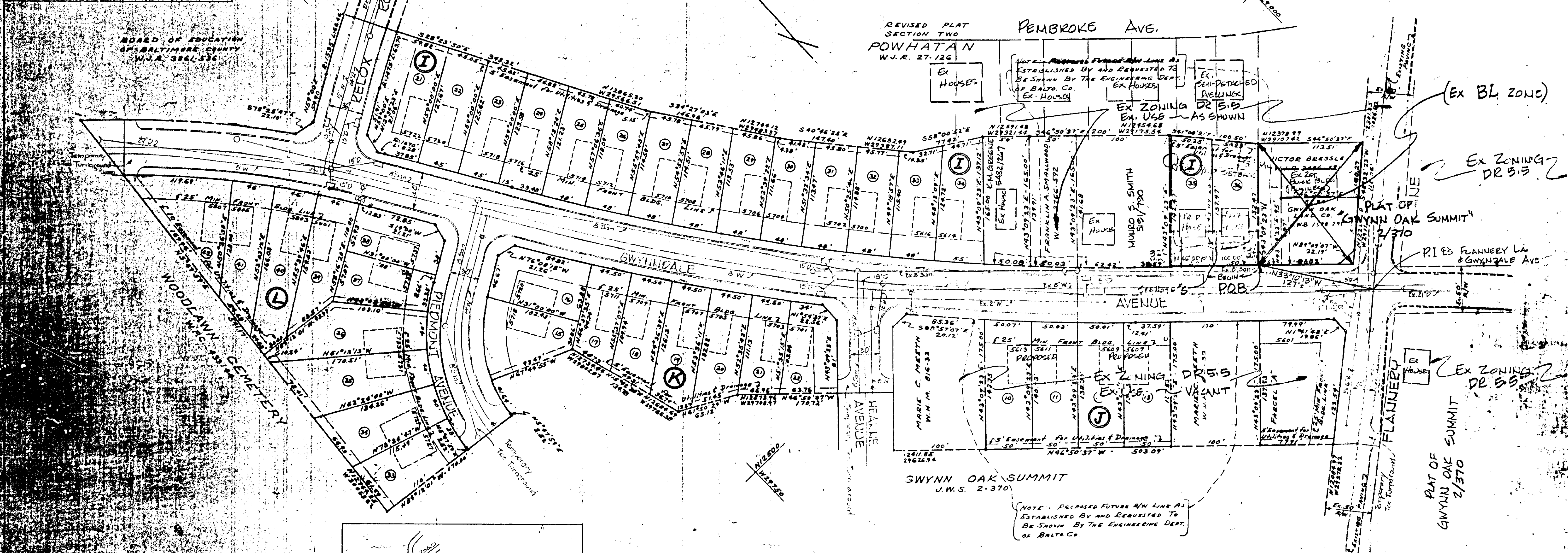
GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
ENGINEERS
575 ALLIANCE AVE.
TOWSON, MARYLAND

OWNER
THE ROUSE INVESTING CO.
10275 LITTLE PATUXENT PKWY.
COLUMBIA, MARYLAND 21044

PETITION
EXHIBIT

TITLE
DEED RECORD
PLAT RECORD
TAX MAP

Curve	Angle	Radius	Chord	Long Chord
1	100°00'00"	100.00	100.00	100.00
2	100°00'00"	100.00	100.00	100.00
3	100°00'00"	100.00	100.00	100.00
4	100°00'00"	100.00	100.00	100.00
5	100°00'00"	100.00	100.00	100.00
6	100°00'00"	100.00	100.00	100.00
7	100°00'00"	100.00	100.00	100.00
8	100°00'00"	100.00	100.00	100.00
9	100°00'00"	100.00	100.00	100.00
10	100°00'00"	100.00	100.00	100.00



LOCATION MAP
SCALE: 1"=50'

GENERAL NOTES

1. TWO (2) PARKING SPACES TO BE PROVIDED ON EACH LOT.
2. EXISTING ZONING - D2.55.
3. LOTS LOCATED IN DR 5.5 (TRANSITION AREA)
4. PARKING REQUIRED - 4 SPACES (2 PER EA LOT)
5. PROPOSED PARKING - 4 SPACES (2 ON EA LOT)
6. SIDE YARD: MIN 8' COMBINATION OF 20'
7. REAR YARD: 30'
8. FRONT SETBACK: K.M. GREENE HOUSE = 30'
MURDO SMITH HOUSE = 25'
74+2 = 32' A.D.M. SETBACK

GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
ENGINEERS
333 ALLEGHENY AVE.
BALTIMORE, MARYLAND



VARIANCE REQUIRED FROM SECTION 1801.2C.4

LOTS 35 & 32, BLOCK 1 TO PERMIT LOT WIDTHS OF 50' INSTEAD OF 30'

TITLE
DEED REF: E.H.K. JR. 5418/327
TAX MAP # 33, PARCEL 238
PLAT REF: PLAT ONE, SGT. THREE
"POWHATAN"
28/102

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCE

POWHATAN
2ND ELECTION DISTRICT
BALTIMORE COUNTY, MD.
SCALE 1"=50' JULY 10/1980

OWNER / DEVELOPER
THE ROUSE INVESTING CO.
10275 MIDDLE PATUXENT FLYING
COLUMN, MARYLAND 21024